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JULIE RICHARDS JOHNSTON, CLERK
US DISTRICT COURT, EDNC
BY ________ DEP CLK

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Western Division (Raleigh)
Case No. 5:14-cv-365

Stephen Thomas Yelverton	)	
	)	MOTION TO ALTER OR AMEND
Plaintiff	)	JUDGMENT PER FRCP RULE 59 (e)
	)	and
v.	)	MOTION FOR LEAVE TO AMEND
	)	COMPLAINT PER FRCP RULE 15 (a)(2)
Yelverton Farms, Ltd.	)	
	)	
and	)	
	)	
Phyllis Y. Edmundson	)	
	)	
Defendants	)	

COMES NOW, Plaintiff Stephen Thomas Yelverton, Pro Se, pursuant to FRCP, Rule 59 (e) and Rule 15 (a)(2), and hereby timely requests within twenty-eight (28) days of the Order and Judgment, entered February 26, 2015, that these decisions be altered or amended for this Motion for Leave to Amend the Complaint to be accepted to cure certain pleading deficiencies in the Complaint, as specified in the Order and Judgment.

1. The timely filing within twenty-eight days of a motion under FRCP, Rule 59 (e), tolls the finality of the decisions to be altered or amended. Browder v. Director, Dep't of Corrections of Illinois, 434 U.S. 257, 267 (1978); Moore's Federal Practice 3D, Section 59.32 [1] and [2]. See also, Stubbs v. Hunter, 806 F.Supp. 81, 83 (D.S.C. 1992); Office of Strategic Services v. Sadeghian, 528 Fed. Appx. 336, 348 (4th Cir. 2013).

2. A Complaint may be Amended post-Judgment to add specificity to its allegations of fact through motions under FRCP, Rule 59 (e) and Rule 15 (a)(2), and the two motions rise or fall together. Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999); Mayfield v. Nat. Ass'n Stock Car Auto Racing, 674 F.3d. 369, 378-379 (4th Cir. 2012).

3. A motion to alter or amend a Judgment under FRCP, Rule 59 (e), may be granted to "prevent a manifest injustice," and a conclusion that the District Court abused its discretion in denying a motion for leave to amend the Complaint is sufficient grounds upon which to reverse the District Court's denial of a Rule 59 (e) motion. Mayfield, id.

4. Where a defect in a Complaint is curable, Plaintiff should be allowed Leave to submit an Amended Complaint. Misel v. Green Tree Servicing, LLC, 782 F.Supp.2d 171, 178 (E.D.N.C. 2011). With a dismissal under FRCP, Rule 12 (b)(6), the District Court "normally will give Plaintiff leave to file an Amended Complaint because Federal policy requires that Plaintiff be given every opportunity to cure a formal defect in his Complaint." Ostrzenski v. Seigel, 177 F.3d 245, 252-253 (4th Cir. 1999), citing to Wright & Miller 5A, *Federal Practice and Procedure*, Section 1357, pp. 360-367 (2nd Ed. 1990).

5. A post-Judgment motion for Leave to Amend a Complaint is evaluated under the same legal standard for FRCP, Rule 15 (a), as a similar motion before the Judgment was entered, which directs that Leave to Amend "shall be freely given when justice so requires," and where the Fourth Circuit reads FRCP, Rule 15 (a), to mean that Leave to Amend the Complaint should be denied only when the Amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the Amendment would be futile. Foman v. Davis, 371 U.S. 178, 182 (1962); Matrix v. Bearingpoint, 576 F.3d 172, 193-194 (4th Cir. 2009); Sciolino v. Newport News, 480 F.3d 642, 651 (4th Cir. 2007); Laber v. Harvey, 438 F.3d 404, 426-428 (4th Cir. 2006).

6. The burden is on the opposing party to show why the motion for Leave to Amend the Complaint should not be granted. Lewis-Burke Associates, LLC v. Widder, 725 F.Supp.2d 187, 195 (D.D.C. 2010).

7. Defendant Edmundson could not be prejudiced by a curative Amendment to the Complaint because she is fully aware of the events giving rise to this civil action, and because Discovery has not yet commenced. Matrix v. Bearingpoint, id., at 195.

8. As is demonstrated below, the specified pleading deficiencies in the Plaintiff's Complaint are curable, and thus the FRCP, Rule 59 (e), motion should be granted in order for Leave to Amend the Complaint, per FRCP, Rule 15 (a)(2), to be granted to cure the specified pleading deficiencies.

Summary of the Nature of the Case

9. This is a civil action by the Plaintiff, Yelverton, for monetary damages and for recovery of his legally owned property interests in North Carolina with respect to Yelverton Farms, Ltd., that has been wrongfully taken from him and wrongfully possessed and used by his sibling, Edmundson, for her personal financial benefit, to the financial detriment of Yelverton, which has left him a pauper with no assets.

Statement of the Facts applicable to these Motions

10. In the Order and Judgment, entered February 26, 2015, the District Court dismissed the claims of Yelverton, pursuant to FRCP, Rule 12 (b)(6), for certain specified pleading deficiencies in the claims. This includes the following:

(a) Malicious Interference by Edmundson with Yelverton's Production Contract

11. The Order, at pp. 18-20, found that Yelverton did not allege any contractual rights that he possesses against Maxwell Foods/Goldsboro Hog Farms, Inc., by virtue of the Production Contract that he has held with them since 1996, nor did Yelverton allege that the Production Contract has been terminated as a result of the actions of Edmundson, or that Maxwell has failed to perform on its obligations under the Contract.

(b) Conversion by Edmundson of Yelverton's Production Contract

12. The Order, at pp. 20-21, found that Yelverton did not allege that Edmundson actually took the physical document constituting the Maxwell Production Contract, and it found that Edmundson taking any proceeds from a sale of the pig production operation under the Production Contract would be the taking of a "business opportunity" because the $700,000, in money invested by Yelverton in the pig production operation was not identified or described as a specific chattel.

(c) Malicious Interference bv Edmundson with Yelverton's Prospective Business Relationships

13. The Order, at pp. 21-22, found that Yelverton did not allege or show that a valid contract with a third party would have existed to sell the pig production operation, but for the conduct of Edmundson, nor did Yelverton make an express allegation that such a purchase contract would have existed.

(d) Breach by Edmundson of Fiduciary Duty to Yelverton

14. The Order, at pp. 22-27, found that the "precise nature of Plaintiff's alleged fiduciary relationship with Defendant Edmundson is unclear," whether as the holder of the Production Contract, as a shareholder in Yelverton Farms, Ltd., or as a creditor to the corporation.

15. The Order, at p. 23, found that Yelverton did not sufficiently allege that he and Edmundson had an Agency/Principal relationship, or that Edmundson had manifested any consent regarding an Agency relationship as to the Production Contract.

16. The Order, at pp. 23-27, found that Yelverton did not sufficiently allege that he was a stockholder in Yelverton Farms, Ltd., at the time of the events in question, or that the property was outside the Bankruptcy Estate, and the status of the stock is muddled.

17. The Order, at pp. 27-29, found that Yelverton did not sufficiently allege facts as to the terms of his investment of $700,000, in Yelverton Farms, Ltd., in order to show a fiduciary relationship existed with Edmundson regarding that investment, and failed to show that the $700,000, investment would not be property of the Bankruptcy Estate.

18. The Order, at pp. 28-29, found that Yelverton did not sufficiently allege facts showing that he is owed $8,262, from Yelverton Farms, Ltd., rather than this sum being owed to the Bankruptcy Estate.

(e) Unfair and Deceptive Trade Practices by Edmundson

19. The Order, at pp. 29-30, found that Yelverton did not sufficiently allege facts that he had any interest regarding the affairs of Yelverton Farms, Ltd., as of the time that the Lease expired on December 31, 2013; that Yelverton had a contract with a third party for purchase of the pig production operation that would have been consummated; that Yelverton had an interest in the pig production operation; and that the acts of Edmundson proximately caused injury to Yelverton.

(f) Judicial Receivership of Yelverton Farms, Ltd.

20. The Order, at p. 30, found that Yelverton did not sufficiently allege facts that he is either a creditor or shareholder in the corporation, and thus would not have statutory standing under N.C. General Statutes, Section 55-14-30, 55-14-31, and 55-1432, to seek judicial receivership and dissolution.

Motion for Leave to Amend the Complaint

21. The Complaint, filed July 18, 2014, is to be Amended to delete all claims under 28 U.S.C. 2201 and 2202, and FRCP, Rule 57, with respect to any Declaratory rulings and Injunctive relief as to Wade H. Atkinson, Jr., and in naming him as a Plaintiff.

22. The Order, at pp. 8-12, and 14, dismissed all matters with respect to Atkinson under FRCP, Rule 12 (b)(1), for lack of subject-matter jurisdiction. Thus, there was no adjudication on the merits, and thereby could be no Res Judicata in a new Complaint.

23. On March 12, 2015, Atkinson assigned to Yelverton for valid consideration all his interests in claims relating to Yelverton Farms, Ltd., except for personal injury and Torts. As the assignee of these business-related claims, Yelverton will be asserting them as the real party in interest in a new Complaint to be commenced.

24. Thus, the existing Complaint will not be Amended with respect to the claims assigned by Atkinson to Yelverton

25. Based upon the foregoing specified pleading deficiencies in the Complaint, which are not with respect to Atkinson, Leave to Amend is requested to cure the pleading deficiencies by adding specificity and clarifications, as is shown below.

Amendment to the Complaint

26. The Complaint is to be Amended to add the following Allegations of Facts:

"In 1994, Yelverton personally provided at least $700,000, in funding to build the infrastructure for the pig finishing operation, which includes eight finishing houses, an office building, sewage lagoon, hard packed gravel roads, two deep water wells, and an irrigation system.

"When Yelverton signed the Production Contract in April 1996, he was told by representatives of Maxwell, who were Tim Price and George Pettus, that Maxwell only entered into Production Contracts with individuals, and not corporations, in order to have personal accountability and liability by an individual as to performance on the Contract."

"At the time of signing the Production Contract in April 1996, Yelverton directed Maxwell to deposit the payments under the Production Contract to the bank account of Yelverton Farms, Ltd., where Yelverton and his father, John Thomas Yelverton, were the only signatories on the bank account. Yelverton's father, who was the President and accountant for Yelverton Farms, Ltd., recommended that the payments be directly deposited to the corporate bank account for optimal bookkeeping purposes, and for no other reason." Yelverton individually retained all rights and interests in the Production Contract, and exercised his rights and interests to assure his integrity as to the Contract."

"Yelverton's exclusive rights under the Production Contract are to control the pig finishing operations at the facilities located at Yelverton Farms, Ltd., and the right to exclusively receive pigs from Maxwell to fatten at those facilities," with not making a request for a specific 'work order' to Maxwell for any pigs to fatten."

"Yelverton was never told by Maxwell that the Production Contract is a Master Service Agreement, and that term, and the term 'work order' were never used by it."

"After signing the Production Contract in April 1996, Yelverton received payments from Maxwell which were only to be used for repairs on the finishing houses. Edmundson, who was not then involved in the pig finishing operations, demanded that these funds for repairs be paid by Yelverton to her immediate family members, who would do only minimal or no work. Yelverton refused to make any fraudulent payments to Edmundson's immediate family members, and Yelverton's father refused to do so, because it would put the Production Contract and Yelverton's integrity with Maxwell at risk."

"Edmundson continued to demand that Yelverton and his father make payments to her immediate family members for bogus work at the pig finishing operation, and particularly where the funds were from insurance proceeds. They refused in order to protect the Production Contract and Yelverton's integrity. Yelverton's father passed away in December 1999. After his passing, Edmundson began to push Yelverton out from management of the pig finishing operation."

"After December 1999, Edmundson took physical custody and possession of the Production Contract from the corporate records, but told Yelverton that she was acting as his Agent and on his behalf with respect to the Contract. Yelverton agreed to Edmundson being his Agent on the assumption that she was acting in good faith."

"Edmundson was unable to completely push Yelverton out because he held the Production Contract in his individual name and because Yelverton was personally liable on a large bank note for the benefit of Yelverton Farms, Ltd., and where his stock was also collateral for the note."

"After the bank note was paid off, Edmundson obtained Yelverton's stock certificates from the bank. She then had Yelverton removed in May 2008, as an officer and director of Yelverton Farms, Ltd. Edmundson assigned Yelverton's stock in the corporation in May 2008 to Wade H. Atkinson, Jr., although not disclosing it to them, until March 17, 2010. Edmundson and Atkinson shared the same counsel.

"On August 20, 2009, Edmundson had executed an Affidavit which swears under penalty of perjury, as follows:

at para. 10, that she " 'is aware of her fiduciary duties as a .... Director in a closely held corporation," and "in acknowledgement of those fiduciary duties, she has dealt with [Yelverton] honestly and fairly at all times ......' "

at para. 12, that " 'at no time has she, or any other shareholder ..., excluded [Yelverton] from management of the corporation or from administration of the Production Contract .... or otherwise breached her fiduciary duty or allowed other shareholders to breach their fiduciary duty as directors and majority shareholders ... ' "

at para. 14, that " '[Edmundson] as President of [the] corporation, has and will continue to carry on the business of the corporation, preserve the corporate assets, and protect the Production Contract, protect the financial interests ... of all ... shareholders,' " and that " 'she and the other shareholders ...are operating the corporation for the benefit of all the shareholders in compliance with their fiduciary obligations to the corporation and to is shareholders.' "

"On December 31, 2013, Edmundson refused to renew the Lease of her land to Yelverton Farms, Ltd., and thereby took individual ownership of the buildings and infrastructure of the pig finishing operation which were attached to her land, in which Yelverton had personally invested at least $700,000, to build."

"In late January 2014, Yelverton received a telephone call from Bob Ivey, the President of Goldsboro Hog Farms, Inc., a subsidiary of Maxwell Foods, Inc., that it or one of its affiliated Growers was interested in acquiring the pig finishing operation under the Production Contract held by Yelverton, where the purchase price would be some $1.2 Million, exclusive of the surrounding land, which Ivey said was the standard price for the purchase of a Production Contract and associated operations, and is based upon future cash flow. This interest was followed up by e-mails with Ivey in March 2014."

"Ivey had told Yelverton by telephone that Maxwell added a provision to all its Production Contracts that they could not be terminated by either party, unless with two years written notice, and was a mandatory state requirement.

"Ivey and Goldsboro Hog Farms recognized Yelverton as the sole holder of the Production Contract. Yelverton suggested to Ivey that he directly contact Edmundson with respect to acquisition of her land. After Ivey had contacted Edmundson in March 2014, Yelverton never was re-contacted by Ivey or Goldsboro Hog Farms."

"In July 2014, Yelverton's counsel for the sale of the pig finishing operation was contacted by a person that was a representative of Goldsboro Hog Farms, who made negative comments about Yelverton that came from Edmundson, and who indicated that it would no longer deal with Yelverton as to the pig finishing operation and in a sale.

"Goldsboro Hog Farms has severed its relationship with Yelverton and deals only with Edmundson as to the Production Contract, and operations under the Contract, and Edmundson has agreed to sell the Contract and operation with all payments to her, and where she has no legitimate justification to take all control and all proceeds for herself."

"Yelverton Farms, Ltd., has always been for Federal tax purposes an 'S' corporation where its distributions to shareholders are treated as 'earned income' to them."

Arguments in Support of Motion for Leave to Amend the Complaint

(a) Malicious Interference by Edmundson with Yelverton's Production Contract

27. The Allegations of Facts to be Amended allege that Yelverton has had in his individual name a valid Production Contract with Maxwell/Goldsboro Hog Farms for over 20 years of continuous mutual performance.

28. In order for a valid contract to exist, there must be "consideration," which is "*some benefit or advantage to the promisor* [Maxwell], *or some loss or detriment to the promisee* [Yelverton]." It has been held that "there is consideration if the promisee [Yelverton], in return for the promise, *does anything legal which he is not bound to do, or refrains from doing anything which he has a right to do*, whether there is any actual loss to him or actual benefit to the promisor [Maxwell] or not." Mutual promises may also support a contract. Penley v. Penley, 314 N.C. 1, 16, 332 S.E.2d 51, 59-60 (N.C. 1985).

29. The Allegations of Facts in the Complaint to be Amended allege that Yelverton assumed the liability or detriment of assuring performance on the Production Contract and its integrity for over 20 years, and through the supervision of Yelverton under the Production Contract, that Maxwell received the benefit of their pigs being fattened and finished for its slaughter and sale to Smithfield Foods.

30. The Production Control moreover contains the mutual promises of Maxwell to provide pigs to Yelverton for fattening and finishing, and of Yelverton to provide the fattened and finished pigs to Maxwell for its slaughter and sale.

31. If a contract is susceptible of two constructions, one of which will make it enforceable and the other unenforceable, the former will be preferred. Wellington-Sears v. Dize, 196 NC 748, 751 147 S.E. 13, 15 (N.C. 1929).

32. The Allegations of Facts to be Amended allege that Yelverton did not assign at any time the Production Contract to Yelverton Farms, Ltd., and that he retained at all times his rights and interests in the Contract. Morton v. Thornton, 259 N.C. 697, 131 S.E.2d 378, 380 (N.C. 1963), an "assignment is a transfer with the clear intent at the time to part with all interest in the thing, and with a full knowledge of the rights so transferred."

33. What Yelverton did was to direct Maxwell to make the production payments to the bank account for the corporation, where Yelverton and his father were the only signatories on the account, which was done only for bookkeeping purposes, and where Maxwell continued to recognize Yelverton as the sole holder of the Production Contract and where under its own policy would not allow a corporation to be the holder of a Production Contract in order to assure personal accountability under the Contract.

34. The Allegations of Facts to be Amended allege that the Production Contract is not a Master Service Agreement, in view of Maxwell never characterizing it as such or ever using that term, or the term "work order."

35. Under the Production Contract, neither Yelverton nor Maxwell may terminate it, unless with two years written notice to the other, and where it may be sold with consent.

36. Under the standard definition of a Master Service Agreement, it is a "blanket contract" that contemplates as yet unspecified and wholly contingent performance in the future, which obligates neither party to perform any services, and where only issuance of a specific work order triggers the obligation to perform. It differs from a contract which governs a "specific terminable performance of a specific job or activity." Burnham v. Sun Oil Co., 618 F.Supp. 782, 785 (D. La. 1985).

37. The Allegations of Facts to be Amended allege that in March 2014 and afterwards Edmundson intentionally induced Maxwell/Goldsboro Hog Farms not to deal with Yelverton as to the Production Contract, and to only deal with her, to the exclusion of Yelverton.

38. There are Allegations of Facts to support all elements of the Tort of Malicious Interference of Contract. This includes the key element of Yelverton having a valid contract which confers upon him a contractual right against Maxwell/Goldsboro Hog Farms to provide him with pigs for fattening and finishing, and the contractual right to supervise the pig finishing operation United Laboratories, Inc. v. Kuykendall, 322 N.C. 643, 661, 370 S.E.2d 375, 387 (N.C. 1988).

39. The Allegations of Facts also include the key element of Edmundson intentionally inducing Maxwell/Goldsboro Hog Farms after March 2014 not to perform for Yelverton on the Production Contract, but only for her, where she has no legitimate justification to take all control of the Production Contract from Yelverton and to take all proceeds from a sale of the Contract, to the exclusion of Yelverton. United, id.

40. As alleged in the Complaint to be Amended, Yelverton has been injured by Edmundson in the amount of al least $700,000, which was necessary for him to invest in the pig finishing operation in order to obtain the Production Contract. The actions of Edmundson directly caused Yelverton's exclusion from the Production Contract to her financial benefit. There need not be a fiduciary relationship with Edmundson

41. Yelverton has Exempted from the Estate under 11 U.S.C. 522 the Production Contract, and thus it is his property and not that of the Estate, and is not under the control of the Chapter 7 Trustee.

(b) Malicious Interference by Edmundson with Yelverton's Prospective Business Relationships

42. The Allegations of Facts in the Complaint to be Amended allege that in March 2014 and afterwards Goldsboro Hog Farms, or its affiliate Growers, were ready, willing, and able to acquire the Production Contract held by Yelverton and the pig finishing operation under that Contract, for $1.2 Million, exclusive of the surrounding land, and with adjustments as to the condition of the finishing houses, but that Edmundson induced them not to deal with Yelverton, and only with her in order to obtain all proceeds of $1.2 Million from a sale, where she had no justification to do so.

43. There are Allegations of Facts to support all elements of the Tort of Malicious Interference with Prospective Business Relationships, which consists of maliciously preventing the making of a contract that is done with design to injure the Plaintiff or gain some advantage at his expense. Owens v. Pepsi Cola Bottling Co., 330 N.C. 666, 680 (1992). Bad faith by the Defendant is the "gist" of the action. Market America, Inc. v. Robin Christman-Orth, 135 N.C. App. 143, 158, 520 S.E.2d 570, 581 (1999).

44. As previously shown, the Production Contract is supported by "consideration," and thereby valid, and was Exempted from the Estate under 11 U.S.C. 522, and thus the property of Yelverton, which could be sold by him, but where Edmundson prevented a sale by Yelverton of the Production Conduct to persons who wanted to acquire it.

(c) Conversion of the Production Contract and its proceeds by Edmundson

45. The Allegations of the Facts in the Complaint to be Amended allege that Edmundson has had physical possession of the Production Contract, where she controlled it for her financial benefit to the exclusion and detriment of Yelverton. These Allegations of Facts support the Tort of Conversion of personal property.

46. The Tort of Conversion is defined as "the unauthorized assumption and exercise of the right of ownership over the personal property of another to the exclusion of the rights of the true owner." The "essence of Conversion is not the acquisition of the property by the wrongdoer, but a wrongful deprivation of it to the owner ... and in consequence it is of no importance what subsequent application was made of the converted property, or that the Defendant derived no benefit from the act." TSC Research LLC v. Bayer Chemicals Corp., 552 F.Supp.2d 534, 542 (M.D.N.C. 2008).

47. The Tort of Conversion of a contract may be established where there is a Tortious act, and not just a mere breach of the contract. Tudor Associates v. AJ and AJ Servicing, 843 F.Supp. 68, 75 (E.D.N.C. 1993). A document such as a "mailing list" may be Converted, and is not a mere "business expectancy." Edmondson v. AMA, Inc., 7 Fed. Appx. 136, 147 (4th Cir. 2001).

48. The monetary proceeds from Converted property may be subject to an action for Conversion when the money is capable of being identified and described as a specific chattel, and if the funds are commingled an action for Conversion will still lie where the Convertor subsequently identifies the funds after commingling. Alderman v. Inmar Enterprises, Inc., 201 F.Supp.2d 532, 547-548 (M.D.N.C. 2002).

49. The specific chattels associated with the Production Contract, in which Yelverton invested at least $700,000, include eight finishing houses, an office building, an irrigation system, and equipment for two deep water wells.

(d) Imposition of a Constructive Trust on Edmundson to prevent her Unjust Enrichment

50. The Allegations of Facts in the Complaint to be Amended allege that Edmundson inequitably took ownership of the pig finishing operation after December 31, 2013.

51. Edmundson refused to renew the Lease to Yelverton Farms, Ltd., of her land on which the pig finishing operation is situated. Yelverton had in 1994 invested at least $700,000, to install or build eight finishing houses, an office building, sewage lagoon, two deep water wells, hard packed gravel roads, and an irrigation system on this land.

52. A Constructive Trust may be imposed on a person who inequitably acquires title to property in order to prevent them from obtaining an unjust enrichment, and that person need not be a fiduciary to be held liable. Variety Wholesalers, Inc. v. Salem Logistics, 365 N.C. 520, 530-531 (2012).

53. An action for Unjust Enrichment is a request for Restitution and is an action in equity as a *contract implied in law*. The Plaintiff must have conferred a measurable benefit on the Defendant which was accepted. Flexable Foam Products, Inc. v. Vitafoam, Inc., 980 F.Supp.2d 690, 699 (W.D.N.C. 2013).

54. When Yelverton in 1994 invested at least $700,000, in building the infrastructure for the pig finishing operation, title and all equitable interests went to Yelverton Farms, Ltd., and was accepted by it. Thus, Yelverton had no legal or equitable interests in this property on May 14, 2009, when he declared Bankruptcy under Chapter 11, or on August 20, 2010, when he was involuntarily converted to Chapter 7 through the actions of Edmundson who was not a Creditor.

55. The equitable interests of Yelverton would accrue or arise only on and after December 31, 2013, when Edmundson inequitably acquired the property in which he had invested at least $700,000, and where she had paid nothing. Sara Lee Corp. v. Carter, 351 N.C. 27, 519 S.E.2d 308, 313-314 (1999), the wrongdoer is converted to a Trustee at the time he inequitably acquired the property, and the Trial Court may shape the relief.

56. Property interests that arise after the date of the Bankruptcy petition belong to the Debtor, even if the property has pre-Bankruptcy roots, where the property is necessary for the Debtor's "fresh start" after Bankruptcy. In Re Andrews, 80 F.3d 906, 910 (4th Cir. 1996), citing to Segal v. Rochelle, 382 U.S. 375, 380 (1966). See also, In Re Vanwert, 497 B.R. 207, 212 (Bkrtcy. E.D.N.C. 2013), affirming that Andrews and Segal remain the law in the Fourth Circuit.

57. As Yelverton being a Pauper with no assets, because Edmundson who is a not a Creditor has taken them, and with at least $500,000, in Non-Discharged Spousal Debt, it is essential for Yelverton's "fresh start" to obtain the $700,000, or more, he invested in 1994 for the pig finishing infrastructure and gave to Yelverton Farms, Ltd., which Edmundson has now inequitably taken for her personal benefit with no payment by her for its value.

58. Whatever property or money that is recovered from Edmundson based upon any legal theory, would be needed to pay Non-Discharged Debts from the Bankruptcy, and thus would be for the benefit of Creditors, where no Creditors have been paid anything because Edmundson, who is not a Creditor, is to take all assets of the Estate.

(e) Breach by Edmundson of her Fiduciary Duties to Yelverton

59. The Allegations of Fact in the Complaint to be Amended allege that Edmundson in her Affidavit, executed August 20, 2009, under penalty of perjury, acknowledged and represented that she owes Fiduciary Duties to Yelverton as him being the holder of the Production Contract, and as him being the investor in the infrastructure of the pig finishing operation. Edmundson also acknowledged in her Affidavit as being an Agent for Yelverton with respect to the Production Contract to act in his best interests.

60. Whether there is in fact a Fiduciary relationship and in fact an Agency relationship that is Fiduciary, is a factual question to be determined by a Jury. Green v. Freeman, 733 S.E.2d 542, 557 (N.C. App. 2012), citing to Tin Originals v. Colonial Tin Works, Inc., 98 N.C. App. 663, 665-666, 391 S.E.2d 831, 832-833 (N.C. App. 1990); and see, Smock v. Brantley, 76 N.C. App. 73, 75, 331 S.E.2d 714, 716 (N.C. App. 1985).

61. With the determination of a Fiduciary relationship, Edmundson would have breached her Fiduciary Duties to Yelverton by seizing for her personal ownership the property of the pig finishing operation on December 31, 2013, in which Yelverton had invested at least $700,000, and she had paid nothing. Austin v. Crowder, 742 S.E.2d 535, 544 (N.C. App. 2012), breach of a Fiduciary Duty is an "inequitable assertion of power and position" by "self-dealing" in a transaction that benefits oneself instead of another who is owed a Fiduciary Duty and is to his detriment.

62. Edmundson would have moreover breached her Fiduciary Duties to Yelverton by acting after March 2014 to cause Goldsboro Hog Farms not to deal with Yelverton as the holder of the Production Contract, and to deal only with Edmundson for her financial benefit to the exclusion of Yelverton. Austin, id.

(f) Violations of the UDPTA by Edmundson

63. Conduct which constitutes a breach of a Fiduciary Duty in a business context is sufficient to support a claim under the Unfair and Deceptive Trade Practices Act of N.C. General Statutes, Section 75-1.1. Compton v. Kirby, 157 N.C. App. 1, 577 S.E.2d 905, 917 (N.C. App. 2003).

64. Whether conduct is a violation of the UDPTA depends upon the facts and is a Jury question. McDonald v. Scarboro, 91 N.C. App. 13, 18, 370 S.E.2d 680, 684 (1988).

(g) Judicial Receivership, Liquidation, and Dissolution of Yelverton Farms, Ltd.

65. The Allegations of Facts in the Complaint to be Amended allege that Yelverton Farms, Ltd., has always been an "S" corporation for Federal tax purposes. As such, its distributions are treated as "earned income" to the recipients.

66. The post-petition earnings of a Chapter 7 Debtor belong to him and not to the Estate. It is undisputed that Yelverton Farms, Ltd., owes Yelverton at least $8,262, which is "earned income" for tax year 2012.

67. Yelverton is thus a Creditor of the corporation, and as such has statutory standing under N.C. General Statutes, Section 55-14-30 (3)(ii), to seek the Judicial Receivership, Liquidation, and Dissolution of the corporation.

68. As the holder of the Production Contract, Yelverton has "management control" of the pig finishing operation of the corporation. Under Section 55-14-30 (2)(i), where there is a "deadlock" in management, a management person has statutory standing to seek the Judicial Receivership, Liquidation, and Dissolution of the corporation.

Conclusions

WHEREFORE, it is requested that the Motion to Alter or Amend Judgment per FRCP, Rule 59 (e), and the Motion for Leave to Amend the Complaint, per FRCP, Rule 15 (a)(2), be Granted. The proposed Amended Complaint is attached hereto.

This the 26th day of March, 2015,

Respectfully submitted,

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